Citation: *R.* v. *Ex-Sapper C.M. Asselin,* 2004 CM 69

Docket: S200469

STANDING COURT MARTIAL
CANADA
VALCARTIER GARRISON, QUEBEC
5TH COMBAT ENGINEER REGIMENT

Date: December 15, 2004

PRESIDING: LIEUTENANT-COLONEL M. DUTIL, military judge

HER MAJESTY THE QUEEN
Prosecutor
v.
EX-SAPPER C.M. ASSELIN
(Accused)

SENTENCE
(Rendered verbally)

OFFICIAL ENGLISH TRANSLATION

[1] Before pronouncing the sentence, Ex- Sapper Asselin, having accepted and recorded your plea of guilty to the second charge, a punishable offence under section 130 of the *National Defence Act*, namely possession of property obtained by crime, an offence under subsection 354(1) of the *Criminal Code*, the Court finds you guilty of the second charge and orders a stay of proceedings for the first charge.

[2] As former Chief Justice Lamer of the Supreme Court of Canada stated in *R* v. *Généreux*, (1992) 1 S.C.R. 259:

> To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. Breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct.

It remains that the sentence imposed by a court martial, as one imposed by a civil court ruling

in a criminal matter, must be the minimal sentence required in light of all the circumstances of the case and the offender. When determining a fair and equitable sentence, the court must find a balance that will allow it to ensure the public's protection and also maintain discipline within the Canadian Forces.

[3] In determining a sentence it feels is appropriate and minimal in the circumstances, the Court considered the circumstances surrounding the commission of the offences as revealed in the complete and detailed Statement of Circumstances presented by the prosecution, the authenticity of which you accepted, the documentary evidence, and your own testimony. The Court finally considered the prosecutors' pleas and the principles of sentence determination.

[4] The first principle in sentencing is public protection. The Court must determine whether this protection would be ensured by a sentence that aims at punishing, rehabilitating, denouncing or deterring. The importance to be placed on one or the other of the principles obviously depends on the circumstances, which vary from case to case. In some cases, the main concern, if not the only concern, is deterring the offender and/or others. In such circumstances, little or no importance is given to the aspect of rehabilitating or reforming the offender. In other cases, more emphasis is placed on rehabilitating than on deterring. In the case at bar, the emphasis should be on deterring both communally and individually, and also on rehabilitating the offender to ensure public protection and maintain discipline.

[5] When considering what the appropriate sentence would be, the Court considered the following aggravating factors:

> First, the nature of the offence and the sentence set out by Parliament. The prosecution accepted a guilty plea to the second charge, a punishable offence under section 130 of the *National Defence Act*, namely the possession of property obtained by crime, contrary to section 354 of the *Criminal Code*. The second charge was an alternative to the first charge. Under section 355 of the *Criminal Code*, this offence is subject to a maximum prison sentence of two years when the property is valued at under five thousand dollars. This offence is objectively serious, but it must be noted that it is objectively less serious than the offence of being in possession of explosive substances, contrary to subsection 82(1) of the *Criminal Code*, which is subject to a maximum prison sentence of five years and was the subject of the first charge.
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> Second, the Court considered the context of the case and the circumstances surrounding the commission of the offence for which you pleaded guilty. This is the subjective seriousness of the offence. The evidence showed that the C-4, close to 200

> grams or the size of a golf ball, and which cost around 10 dollars, was given to you at Gagetown during the summer of 2001 by a member of the military who had stolen it from the Canadian Forces while you were a member of the holding platoon at the Canadian Forces School of Military Engineering. At that time, you were perfectly aware that it was prohibited to possess such a substance and you knew that the person who gave it to you had stolen it. You still kept the substance for over two years in your room, simply for pleasure, until you gave it to your roommate. The evidence shows that the explosive substance, type C-4, is very stable and cannot explode without a detonator or a source of intense heat such as a fire. It seems that the small quantity in question substantially reduces the potential risks to the safety of persons and property.
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> Third, the Court considered an aggravating factor the fact that you betrayed the confidence of the Canadian Forces and the Canadian population, who make certain dangerous substances available to you for legitimate purposes. You did so by perpetuating the criminal behaviour associated with the explosive that was given to you illegally. The Court would like to think you were young, inexperienced, and fascinated by explosives, but you failed miserably in your basic duties and responsibilities as a member of the military, especially as a Sapper working in a combat engineer regiment.

[6] As for attenuating factors, the Court considered the fact that you pled guilty to the second charge. In the court's opinion, the guilty plea was sincere and honest. Moreover, the prosecution mentioned your close cooperation from the start of the investigation process and throughout. It also mentioned that by pleading guilty, you saved the prosecution from holding a lengthy trial that would have required the presence of 11 witnesses. The Court also considered your young age and the fact that you have started a new career as a carpenter-joiner. The sentence this court will impose should not unjustly prevent your return to the working world or your rehabilitation. The prosecution seems aware that this was an unfortunate error in judgment on your part and that it was an isolated case.

[7] The nature of the offence, the context and the circumstances surrounding the commission of this offence are the key elements leading the court to find that protecting the public and maintaining discipline would be best served by a sentence that reflects deterrence, both communal and individual, but that encourages the offender's rehabilitation.

[8] There is no evidence before this court that the illegal possession of property obtained

by crime, be it an explosive substance or not, is a menace or problem in the Canadian Forces.

[9] The prosecution also pointed out that Ex- Sapper Asselin's unacceptable behaviour was not related, either directly or indirectly, to other criminal activity nor was it to benefit of or headed by a criminal organization. The court would like to point out that it was not an offence that could have been committed as part of a terrorism-inspired act. However, let there be no doubt that one or any number of these factors would constitute especially aggravating circumstances in the context of military personnel being in illegal possession of explosive substances belonging to the Canadian Forces, regardless of the quantity.

[10] As counsel for the prosecution has pointed out, the facts surrounding this case are low on the severity scale for such cases. He recommends that the court impose a reprimand and a $500-dollar fine. The defence suggests that a reprimand is not required under the circumstances if the goal is to encourage general deterrence, given your age and your lack of experience at the time the offence was committed. The Court would favour such an approach if individual or specific deterrence were of equal value in this case, but this is not so. The analysis of the sentencing principles in light of the nature of the offence and the circumstances surrounding the commission of the offence requires that the principle of general deterrence must prevail over individual deterrence in this case.

[11] As a result, the court sentences you to a reprimand and a $400-dollar fine. The Court will not issue an order under section 147.1. of the *National Defence Act*.

LIEUTENANT-COLONEL M. DUTIL, military judge

Counsel:

Major G. Roy, Regional Military Prosecutor, Eastern Region
Counsel for the prosecution
Major J.A.M. Côté, Directorate of Defence Counsel Services
Counsel for Ex- Sapper C.M. Asselin